Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re	)	
	)	
Petition of Denali Spectrum License Sub, LLC	)	WT Docket No. 09-624
for Forbearance Under 47 U.S.C. § 160(c)	)	
from Application of 47 C.F.R. § 1.2111(d)(2)(i)	)	

To: The Commission

DENALI SPECTRUM LICENSE SUB, LLC
PETITION FOR FORBEARANCE

DENALI SPECTRUM LICENSE SUB, LLC

Allen M. Todd
DOYON, LIMITED
1 Doyon Place
Suite 300
Fairbanks, AK 99701
(907) 459-2000

Its Attorney

March 12, 2009

TABLE OF CONTENTS

SUMMARY

Denali Spectrum License Sub, LLC ("Denali") is the licensee of a 10 MHz advanced wireless services ("AWS") license, the license area of which includes approximately 58 million people in the Midwestern United States. In light of prevailing economic conditions, Denali's need for additional capital to fund network deployment, and the opportunity for Denali to create jobs and extend its state-of-the-art network to under-served low income and other segments of the population, the Commission should forbear from applying the terms of Section 1.2111(d)(2)(i) of its Rules to Denali pursuant to 47 U.S.C. § 160.

As shown in this Petition, Denali would be required to forfeit millions of dollars to the federal government under Section 1.2111(d)(2)(i) if it sought to raise capital for growth, inter alia, by partitioning and selling a part of its license area to an entity that did not qualify for bidding credits. At the very same moment the federal government is spending $787 billion, and by some measures in excess of $2 trillion, to stimulate the national economy and promote investment, the economic barrier constituted by this forfeiture to the federal government does not make sense. The President of the United States has called on all departments of government to foster the conditions of growth so that companies can find capital, workers can find jobs, and new competitors can flourish. Application of Section 1.2111(d)(2)(i) in this context is contrary to these national goals, and the criteria for forbearance are met in this case.

First, enforcement of Section 1.2111(d)(2)(i) against Denali is not necessary to ensure that its charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory. Under the Commission's longstanding policies, it is the commercial mobile radio service ("CMRS") market that ensures that Denali's charges, practices, classifications, and regulations are just and reasonable and not discriminatory.

Second, enforcement of Section 1.2111(d)(2)(i) against Denali is not necessary for the protection of consumers. Here, Denali already offers service to the public in the Chicago metropolitan market, extending into Madison and Kenosha, Wisconsin, covering a population of 11.6 million people, and it has built a state-of-the-art CDMA EVDO Rev-A wireless network providing innovative and competitive voice and broadband services. Denali is plainly not a licensee that does not intend to offer service to the public. To the contrary, consumers stand to benefit from the forbearance requested as new construction capital would allow Denali to extend its service offerings to prospective customers in new geographic areas.

Third, forbearance from applying Section 1.2111(d)(2)(i) to Denali is consistent with the public interest. Denali is fulfilling its commitment to provide service to the public using the spectrum authorized for use under its AWS license and the resources of its already considerable network facilities. Forbearance would open potential pathways for Denali to access essential growth capital with which to extend the reach of its network and offer its innovative pay-in-advance wireless service to a larger group of consumers. This is consistent with the public interest. Forbearance from applying Section 1.2111(d)(2)(i) to Denali will also enhance competition by removing a clear barrier to needed growth capital for a new service provider.

Finally, as a condition of the grant of forbearance requested here, Denali will adhere to the terms of Section 1.2111(d)(2)(ii) of the Commission's Rules, as if Denali's license was granted before April 25, 2006, but applying the terms of that regulation based on the actual grant date of Denali's license. With this commitment, the Commission can help to promote the development of competition and serve the public interest by forbearing from applying the provisions of Section 1.2111(d)(2)(i) to Denali but also count on the unjust enrichment safeguards that have existed under the longstanding rule set forth in Section 1.2111(d)(2)(ii).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re	)	
Petition of Denali Spectrum License Sub, LLC for Forbearance Under 47 U.S.C. § 160(c) from Application of 47 C.F.R. § 1.2111(d)(2)(i)	)	WT Docket No. _____

To: The Commission

DENALI SPECTRUM LICENSE SUB, LLC
PETITION FOR FORBEARANCE

Denali Spectrum License Sub, LLC ("Denali"), pursuant to 47 U.S.C. § 160(c) and 47 C.F.R. § 1.53, respectfully petitions the Commission to forbear from applying to Denali the provisions of 47 C.F.R. § 1.2111(d)(2)(i).

I. INTRODUCTION

Denali is the licensee of the 10 MHz advanced wireless services ("AWS") license assigned call sign WQGV784, the license area of which includes approximately 58 million people in the Midwestern United States. Denali's AWS license was granted by the Commission on April 30, 2007 to Denali's sole member, Denali Spectrum License, LLC ("Denali License"), which was the winning bidder for the license in Auction 66. Denali License later assigned the license to Denali. Each of Denali and Denali License is a very small business under Section 27.1102(a)(2) of the Commission's Rules, as a result of which Denali License was eligible for a bidding credit of 25 percent to lower the cost of its Auction 66 winning bid for that AWS license.

Denali has secured debt and equity capital commitments sufficient to permit it to build out and operate a network covering approximately 20 percent of its geographic license area

footprint. In the built portion, Denali has built and launched a state-of-the-art wireless CDMA network and business covering a Midwestern footprint with a population of 11.6 million people. The constructed footprint includes the greater Chicago area and extends up beyond Madison and Kenosha, Wisconsin. Denali launched the Wisconsin portion of its network several months ago, and it launched the Chicago portion of its network last month. Denali's network in these markets is a state-of-the-art CDMA EVDO Rev-A network. It supports both voice and broadband service delivered to consumers by way of leading edge handsets. In the two years since acquiring its spectrum rights, Denali has built a business that includes nearly one thousand cell sites, more than thirty owned stores, several hundred indirect retail outlets, and approximately 6,450 jobs (which includes jobs for Denali's direct employees, jobs within Denali's dealer network, and indirect jobs calculated using a typical job-creation ratio of 1:3). Denali has been able to achieve these accelerated new market launches in part through construction, branding, and other support services contracted with Cricket Communications, Inc., a Denali investor.

Importantly, Denali is bringing an innovative wireless service to under-served segments of the population. Denali offers customers unlimited local voice, long distance, text messaging, and other services in the Denali service area at prices typically ranging from $40 to $50 per month. The offering is tailored to the needs of the lower income segment of the population, those often overlooked by the larger national wireless carriers. As a pay-in-advance service, it permits customers to avoid paying what might otherwise be large, unaffordable security deposits. And yet at the same time, minute usage is unlimited, allowing many customers to rely on Denali's handset as their only phone and use 1,500 or more minutes per month. Denali also offers broadband service in various of its offerings, in many cases providing its customers with their only means of accessing the Internet. This is a service offering that has been embraced by

the low income population in major urban markets around the country, and Denali has worked hard to deliver the highest quality of service to customers in the constructed Chicago and Wisconsin portion of its eleven-state license footprint area.

As a very small business that was awarded a bidding credit to lower the cost of its winning bid for a license granted after April 25, 2006, Denali License, and now Denali, is subject to Section 1.2111(d)(2)(i) of the Commission's Rules and related terms of Section 1.2111(d)(1). Commission modifications to Section 1.2111(d)(2)(i) in 2006 doubled the duration of its unjust enrichment schedule for licenses acquired with bidding credits from five years to ten years. Under the previous regulation, which still applies to a designated entity that used a bidding credit to lower the cost of a winning bid for licenses granted before April 25, 2006, a designated entity that seeks to assign or transfer that license to an entity that does not qualify for the bidding credit or make an ownership change or enter into a material relationship that would disqualify it for the bidding credit (jointly referred to hereinafter as an "Eligibility Change"), would be required to make no unjust enrichment payment if the Eligibility Change occurred in or after the sixth year of its license term. See 47 C.F.R. § 1.2111(d)(2)(ii)(E). In the meantime, the repayment obligation stepped down for an Eligibility Change occurring the third, fourth, and fifth years of the license term. See id., §§ 1.2111(d)(2)(ii)(B)-(D).

Under the rule applicable to a designated entity that used a bidding credit to lower the cost of a winning bid for licenses granted after April 25, 2006, however, the designated entity must repay the full amount of the bidding credit for an Eligibility Change occurring anytime in the first five years of the license term. See id., § 1.2111(d)(2)(i)(A). The repayment obligation steps down for an Eligibility Changes occurring the sixth, seventh, eighth, ninth, and tenth years of the license term. See id., §§ 1.2111(d)(2)(i)(B)-(D). In addition, the designated entity must

repay the full amount of the bidding credit for an Eligibility Change occurring anytime in the license term prior to the filing of the notification informing the Commission that the construction requirements applicable at the end of the initial license term have been met. See id., § 1.2111(d)(2)(i). The effect of the newer rule, even in times of available credit, is to make it extremely difficult, if not effectively impossible, for a designated entity to make any Eligibility Change until the eleventh year of its license term.

In Denali's case, it seeks to grow its business by extending its network to uncovered segments of its license area, bringing its innovative wireless service to customers who cannot otherwise obtain its service and creating new jobs. In order to fund this extension, Denali must raise additional growth capital, either by securing new debt or equity investments in the company and/or by geographically partitioning and selling smaller portions of its license service area as contemplated by the Commission's Rules. As the Commission is aware, the capital markets are largely closed in the current national economy. Worse still, sources of debt and equity growth capital, which are already difficult to come by for a minority-controlled entity such as Denali, have no interest in investing in or lending to Denali while it is barred from traditional liquidity paths as strictly as it is under Section 1.2111(d)(2)(i).

Likewise, as shown below, Denali would be required to forfeit additional millions of dollars to the federal government under Section 1.2111(d)(2)(i) if it sought to raise capital for growth by partitioning and selling a part of its license area to an entity that did not qualify for bidding credits. At the very same moment the federal government is spending $787 billion, and by some measures in excess of $2 trillion, to stimulate the national economy and promote investment, the economic barrier constituted by this forfeiture to the federal government as part of Denali's effort to raise funds and create jobs is nonsensical. The President of the United

States has called on all departments of government to foster the conditions of growth so that companies can find capital, workers can find jobs, and new competitors can flourish. Application of Section 1.2111(d)(2)(i) in this context is contrary to these national goals.

Forbearance from the application of Section 1.2111(d)(2)(i) as requested here is consistent with the federal government's larger effort to stimulate the economy, but without the need for an appropriation of any kind. In that regard, Denali would undertake to apply without delay newly developed capital made possible through forbearance to the construction of its network beyond the 11.6 million people currently covered by it. One example of a potential network expansion is the Des Moines, Iowa economic area, which has a population of 1.7 million people. A Denali network in Des Moines would allow it to offer an opportunity for lower income, as well as other people in this market, to subscribe to Denali's innovative flat rate, unlimited usage plan. The construction of such a network would create an estimated 1,050 permanent jobs (including jobs for Denali's direct employees, jobs within Denali's dealer network, and indirect jobs calculated using a typical job-creation ratio of 1:3), promote the type of new state-of-the-art wireless voice and broadband infrastructure envisioned by the recent federal recovery measure, and provide much needed stimulus in an area such as Des Moines.

In light of prevailing economic conditions, Denali's need for additional capital to fund network deployment, and the opportunity for Denali to create jobs and extend its state-of-the-art network to under-served low income and other segments of the population, the Commission should forbear from applying the terms of Section 1.2111(d)(2)(i) of its Rules to Denali pursuant to 47 U.S.C. § 160.[1] The criteria for forbearance set forth in 47 U.S.C. § 160(a) are satisfied in

[1] Denali makes this request on behalf of itself, Denali License, Denali Spectrum License Operations, LLC, of which Denali License is the sole member, Denali Spectrum, LLC, which is the sole member of Denali License, Denali Spectrum Manager, LLC, which is the member

this case, and such forbearance would improve Denali's prospects for attracting new investment and developing as a successful competitor in the market for commercial mobile radio services ("CMRS"). As a condition of such forbearance, Denali will adhere to the terms of Section 1.2111(d)(2)(ii) of the Commission's Rules, as if Denali's license was granted before April 25, 2006, but applying the terms of that regulation based on the actual grant date of Denali's license.

II. PURSUANT TO 47 U.S.C. § 160, THE COMMISSION SHOULD FORBEAR FROM APPLYING THE TERMS OF SECTION 1.2111(d)(2)(i) OF ITS RULES TO DENALI

Pursuant to 47 U.S.C. § 160, the Commission should forbear from applying the terms of Section 1.2111(d)(2)(i) to Denali. The legal standard applicable in a case such as this is clear. Under 47 U.S.C. § 160(a), the Commission shall forbear from applying a regulation to a telecommunications carrier, in any or some of its geographic market, if the Commission determines that:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a). In making the determination under subsection (a)(3) — the determination of the public interest — the Commission "shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications

---

manager of Denali Spectrum, LLC, and Doyon, Limited, which is the manager member of Denali Spectrum Manager, LLC.

services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." *Id.*, § 160(b). As demonstrated below, each of the prerequisites of 47 U.S.C. § 160(a) are met in this case, for which reason the Commission should grant this petition and forbear from applying the terms of Section 1.2111(d)(2)(i) to Denali.

A. Enforcement of Section 1.2111(d)(2)(i) Against Denali is not Necessary to Ensure that Its Charges, Practices, Classifications, or Regulations Are Just and Reasonable and Are Not Unjustly or Unreasonably Discriminatory

First, enforcement of Section 1.2111(d)(2)(i) against Denali is not necessary to ensure that its charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory. In January, the Wireless Telecommunications Bureau concluded that "U.S. consumers continue to benefit from effective competition in the CMRS marketplace." Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Thirteenth Report, DA 09-54, ¶ 274 (W.T.B. rel. Jan. 16, 2009). Denali offers wireless telecommunications services in competition with national wireless service providers, providing unique and differentiated services that are embraced by under-served segments of the population. In 1994, the Commission adopted a mandatory detariffing policy for providers of domestic CMRS and reiterated its conclusion that "non-dominant carriers are unlikely to behave anticompetitively, in violation of Sections 201(b) and 202(a) of the [Communications] Act, because they recognize that such behavior would result in a loss of consumers." Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory

Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1478 (1994) (citation omitted). As the Commission later made clear:

> We do not set CMRS rates or require that carriers only charge rates as filed. Rather than file tariffs to establish the legally effective rates (and other terms and conditions) for their offering, CMRS carriers enter into service contracts with their customers. We rely on the competitive marketplace to ensure that CMRS carriers do not charge rates that are unjust or unreasonable, or engage in unjust or unreasonable discrimination.[2]

Thus, under the Commission's longstanding policies, it is the CMRS market that ensures that Denali's charges, practices, classifications, and regulations are just and reasonable and are not unjustly or unreasonably discriminatory.

Section 1.2111(d)(2)(i), in contrast, has no bearing on Denali's charges, practices, classifications, or regulations and whether they are just and reasonable and not unjustly or unreasonably discriminatory. The Commission explained the intended function of the rule, and rules like it, when it adopted the rule in 2006:

> The designated entity and unjust enrichment rules were adopted to ensure the creation of new telecommunications businesses owned by small businesses that will continue to provide spectrum-based services. In addition, the unjust enrichment rules provide a deterrent to speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use bidding credits to obtain a license at a discount and later to sell it at the full market price for a windfall profit.

Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, Second Report and Order and Second

[2] Wireless Consumers Alliance, Inc.; Petition for a Declaratory Ruling Concerning Whether the Provisions of the Communications Act of 1934, as Amended, or the Jurisdiction of the Federal Communications Commission Thereunder, Serve to Preempt State Courts from Awarding Monetary Relief Against Commercial Mobile Radio Service (CMRS) Providers (a) for Violating State Consumer Protection Laws Prohibiting False Advertising and Other Fraudulent Business Practices, and/or (b) in the Context of Contractual Disputes and Tort Actions Adjudicated Under State Contract and Tort Laws, Memorandum Opinion and Order, 15 FCC Rcd 17021, 17033 (2000) (footnote omitted).

Further Notice of Proposed Rulemaking, 21 FCC Rcd 4753, 4766 (2006) (footnotes omitted) ("Second Report and Order"). Thus, enforcement of Section 1.2111(d)(2)(i) against Denali in this case would, by the Commission's own logic, have no bearing on Denali's charges, practices, classifications, or regulations. Indeed, as shown below, forbearance from applying Section 1.2111(d)(2)(i) to Denali will promote the underlying purpose of the regulation by helping Denali to attract capital with which to "continue to provide spectrum-based services."

B. Enforcement of Section 1.2111(d)(2)(i) Against Denali is not Necessary for the Protection of Consumers

Second, enforcement of Section 1.2111(d)(2)(i) against Denali is not necessary for the protection of consumers. As noted above, the Commission's rationale for unjust enrichment rules such as Section 1.2111(d)(2)(i) is that they "provide a deterrent to speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use bidding credits to obtain a license at a discount and later to sell it at the full market price for a windfall profit." Second Report and Order, 21 FCC Rcd at 4766 (footnote omitted). Here, Denali already offers service to the public in the Chicago metropolitan market, extending into Madison and Kenosha, Wisconsin, covering a population of 11.6 million people, and it has built a state-of-the-art CDMA EVDO Rev-A wireless network providing innovating and competitive voice and broadband services. Denali is plainly not a licensee that does not intend to offer service to the public or simply to profit from the resale of its AWS license.

To the contrary, consumers stand to benefit from the forbearance requested as new construction capital would allow Denali to extend its service offerings to prospective customers in new geographic areas. Denali offers an innovative pay-in-advance wireless service that provides consumers with unlimited wireless service usage within Denali's service areas for a flat low monthly rate, typically ranging from $40 to $50 per month, a service not offered by

incumbent wireless providers. Denali's service offering has been disproportionately embraced by low income consumers and members of racial minority groups, two segments of the national population that are dramatically underserved by the large incumbent wireless carriers. Denali's existing network covers a population of 11.6 million, material portions of which are home to these segments of the population, which will benefit greatly from Denali's innovative service offering.

Nevertheless, the United States is in the throes of the worst breakdown of capital markets since the Great Depression. Access to capital limitations, even for larger companies, are now well documented in the press. For smaller, startup wireless companies such as Denali, the impact is even more damaging, blocking access to debt and equity growth capital at the very moment it is needed to continue to roll out competitive wireless services. In the state of the current capital markets, Section 1.2111(d)(2)(i) of the Commission's Rules prevents Denali from raising additional debt and equity capital to fund its ongoing expansion. Prospective debt and equity investors, already hard to come by, have no tolerance in these market conditions for supporting a company such as Denali that is subject to the uncommon, ten-year long illiquidity imposed by Section 1.2111(d)(2)(i).

Moreover, application of Section 1.2111(d)(2)(i) in this economy deprives Denali of the realistic ability to raise capital by geographically partitioning and selling a smaller portion of its spectrum rights. Partitioning is the assignment of geographic portions of a license along geopolitical or other boundaries. Under the Commission's Rules, an AWS licensee may apply to partition its licensed geographic service area at any time following the grant of its license. *See* 47 C.F.R. § 27.15(a)(2). When it first proposed a widespread right to partition, the Commission recognized that "partitioning may provide a funding source that would enable licensees to build-

out their systems and provide the latest in technological enhancements to the public." Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; Implementation of Section 257 of the Communications Act - Elimination of Market Entry Barriers, Notice of Proposed Rulemaking, 11 FCC Rcd 10187, 10199 (1996).

As contemplated by the Commission, Denali desires to explore partitioning and selling one or more geographic portions of its spectrum rights as a means of raising revenue with which to fund its continued network construction. Yet, Section 1.2111(d)(2)(i) materially limits Denali's ability to do so. Consider the following example. Denali is approaching the start of year three of its license term. If Denali desired in year five of its license term to partition a geographic area that includes 20 percent of the population of Denali's license area to an acquirer that did not qualify for bidding credits, Denali would have been required to forfeit $5.5 million under the unjust enrichment schedule in place for licenses granted prior to April 25, 2006. As Denali's license was granted after April 25, 2006, however, Section 1.2111(d)(2)(i) applies, and Denali would be required to forfeit $21.9 million for the same partition, which is $16.4 million more than under the earlier schedule. Assuming a sale price of $0.25 per MHz/POP for the partitioned area, the proceeds to Denali before payment of the current unjust enrichment penalty would have been only $29.1 million. The net proceeds after payment of the current unjust enrichment penalty would be just $7.2 million.

The additional $16.4 million that Denali would have to forfeit under Section 1.2111(d)(2)(i) in this example is money that, under the Commission's original plan for partitioning, Denali could have used for network construction and service deployment. Assuming $30 of cost per additional covered POP, $16.4 million would have enabled Denali to cover 550,000 additional people with its state-of-the-art network and service offerings. At the

very same moment the federal government is spending at least $787 billion, and by some measures in excess of $2 trillion, to stimulate the national economy, this forfeiture to the federal government as part of Denali's effort to raise funds is nonsensical. The President of the United States has called on all departments of government to foster the conditions of growth so that companies can find capital, workers can find jobs, and new competitors can flourish. Application of Section 1.2111(d)(2)(i) in this context is contrary to these nationwide efforts.

In contrast, forbearance from the application of Section 1.2111(d)(2)(i) to Denali promotes the achievement of the federal government's larger goals to stimulate the economy, but without the need for an appropriation of any kind. Forbearance as requested here opens up potential conduits for Denali to access additional capital with which to expand its operational network to a larger segment of the population in the geographic service area of its AWS license. Consumers, particularly lower income customers, stand to benefit from having the choice of Denali's innovative pay-in-advance wireless service and from the presence of a new competitor in the CMRS market. Enforcement of Section 1.2111(d)(2)(i) against Denali, therefore, is not necessary for the protection of consumers. To the contrary, consumers will be among the beneficiaries of the forbearance requested here.

C. Forbearance from Applying Section 1.2111(d)(2)(i) to Denali is Consistent with the Public Interest

Third, forbearance from applying Section 1.2111(d)(2)(i) to Denali is consistent with the public interest. As demonstrated, Denali is fulfilling its commitment to provide service to the public using the spectrum authorized for use under its AWS license and the resources of its already considerable network facilities. Forbearance from applying Section 1.2111(d)(2)(i) to Denali would open potential pathways for Denali to access essential growth capital with which to extend the reach of its network and offer its innovative pay-in-advance wireless service to a

larger group of consumers. This is squarely consistent with the public interest. To the contrary, continuing to apply the terms of Section 1.2111(d)(2)(i) to Denali in current national economic conditions is contrary to the public interest because it has the effect of preventing the development of a sorely-needed new service provider.

Importantly, as noted, in making the determination regarding the public interest under 47 U.S.C. § 160(a)(3), the Communications Act requires the Commission to "consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services." 47 U.S.C. § 160(b). If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest. *See id.*, § 160(b).

In this case, forbearance from applying Section 1.2111(d)(2)(i) to Denali will squarely promote competitive market conditions and enhance competition among telecommunications providers by removing a clear barrier to needed growth capital for a new competitor. Among other things, as noted, Denali would be able to use newly developed capital made possible through forbearance to expedite the construction of its network to areas that could include, by way of example, the Des Moines, Iowa economic area, which has a population of 1.7 million. The construction of that network would create a considerable number of new permanent jobs, estimated to total 1,050 (including jobs for Denali's direct employees, jobs within Denali's dealer network, and indirect jobs calculated using a typical job-creation ratio of 1:3), and provide advanced infrastructure and wireless services that are clearly useful in driving economic growth amidst these difficult economic conditions.

Moreover, as described above, Denali offers an innovative pay-in-advance wireless service that provides consumers with unlimited wireless service usage within Denali's service areas for a flat low monthly rate, typically ranging from $40 to $50 per month, a service not offered by the large, entrenched incumbent wireless providers. Denali's service offering has been disproportionately embraced by low income consumers and members of racial minority groups, two segments of the national population that are dramatically underserved by the large incumbent wireless carriers. It is squarely in the public interest to forbear from applying the Commission's regulation where it has the effect of limiting Denali's ability to extend this service offering to new consumers.

Finally, creating the conditions in which Denali can extend its service and grow its business will help to advance the Commission's longstanding effort to promote and support the diversification of ownership in telecommunications and media industries. As noted above, Denali is ultimately owned and controlled by Doyon, Limited ("Doyon"), which is an Alaska Native Regional Corporation organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq. Doyon's shareholders are 17,500 Alaska natives of principally Athabascan and Eskimo descent. Grant of forbearance as requested here will help Denali to expand, which will advance the cause of diversification so often articulated by the Commission. In July, 2008, then Commissioner (now Acting Chairman) Copps demonstrated that the Commission should commit itself to:

> try to increase the availability of capital to minority and female entrepreneurs who are waiting to build new businesses and who, by doing so, will advance not just minority interests, but the interests of all Americans—the public interest.

FCC En Banc Hearing And Conference On Overcoming Barriers To Communications Financing,

Remarks of FCC Commissioner Michael J. Copps at 3 (July 29, 2008) (available at http://www.fcc.gov/ownership/hearing-newyork_072908.html). Commissioners Adelstein and McDowell have expressed the same goals.[3] Grant of forbearance as requested here is consistent with the Commission's commitment and, as shown, with the public interest.

III. AS A CONDITION OF FORBEARANCE, DENALI WILL ADHERE TO THE TERMS OF SECTION 1.2111(d)(2)(ii) OF THE COMMISSION'S RULES, AS IF DENALI'S LICENSE WAS GRANTED BEFORE APRIL 25, 2006, BUT APPLYING THE TERMS OF THAT REGULATION BASED ON THE ACTUAL GRANT DATE OF DENALI'S LICENSE

Finally, as a condition of the grant of forbearance requested here, Denali will adhere to the terms of Section 1.2111(d)(2)(ii) of the Commission's Rules, as if Denali's license was granted before April 25, 2006, but applying the terms of that regulation based on the actual grant date of Denali's license. With this commitment, the Commission can help to promote the development of competition and serve the public interest by forbearing from applying the provisions of Section 1.2111(d)(2)(i) to Denali but also count on the unjust enrichment safeguards that have existed under the longstanding rule set forth in Section 1.2111(d)(2)(ii). The Commission cannot have foreseen the historic economic crisis now facing the nation when it resolved to change Section 1.2111(d)(2) in 2006. The Commission should take the steps needed to see that new entrants such as Denali have the tools they need to survive in these economic conditions. Helping Denali to access new growth capital by granting this petition for forbearance, while relying on the older, longstanding unjust enrichment rule, is a balance Denali urges the Commission to strike.

---

[3] See FCC En Banc Hearing And Conference On Overcoming Barriers To Communications Financing, Remarks of FCC Commissioner Jonathan S. Adelstein at 4 (July 29, 2008); FCC En Banc Hearing And Conference On Overcoming Barriers To Communications Financing, Remarks of FCC Commissioner Robert M. McDowell at 1 (July 29, 2008) (each available at http://www.fcc.gov/ownership/hearing-newyork_072908.html).

VI. CONCLUSION

For these reasons, Denali respectfully urges the Commission to forbear from applying to it the provisions of 47 C.F.R. § 1.2111(d)(2)(i).

Respectfully submitted,

DENALI SPECTRUM LICENSE SUB, LLC

By: _____

Allen M. Todd
DOYON, LIMITED
1 Doyon Place
Suite 300
Fairbanks, AK 99701
(907) 459-2000

Its Attorney

March 12, 2009